IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2682 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANESHBHAI MATHURBHAI CHHARA (RATHOD)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2682 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by

the detaining authority, by its order dated 21.1.2004 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference about two criminal cases registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in country made liquor. After recording subjective satisfaction, and after considering the statements of the witnesses, whose names have not been disclosed to the petitioner, the detaining authority has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. The learned Advocate for the petitioner has submitted that, the allegation against the petitioner is that, he is dealing in country made liquor, and there are only two criminal cases registered against him for alleged breach of the Bombay Prohibition Act, and that itself is not sufficient for coming to the conclusion that the petitioner is disturbing the public order, and therefore, it cannot be said that the petitioner has violated public order, as, at the most, it can be said that there is breach of law and order on the part of the petitioner.

4. Learned advocate for the petitioner submitted that, at the relevant time, when the detention order was passed by the authority, the petitioner was already in judicial custody. He was released on bail in connection with first case and regarding second case he was in judicial custody. It is further submitted that, the detaining authority has not properly reached the subjective satisfaction while coming to the conclusion that the petitioner, on presentation of application for bail, will get the bail and will continue his illegal activities.

5. Learned Advocate for the petitioner further submitted that, in spite of the fact that the petitioner is in judicial custody, it is mentioned in the order that, after submitting bail application at any point of time, the petitioner may continue his activity after getting the bail. It is further submitted that there is no material available with the authority for coming to the satisfaction that even though the petitioner is already in judicial custody, on submitting the bail

application, he will be released on bail. It is not stated as to on what basis the authority has reached the subjective satisfaction that the petitioner will continue his alleged illegal activities again after getting the bail.

6. In this connection, learned Advocate for the petitioner has relied upon the decision of the Apex Court in Amritlal & Others vs. Union Government and others reported in AIR 2000 SC 3675, wherein it is held as under:-

"4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal, I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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"6. The requirement as noticed above in Binod

Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

"7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

7. So far as the aforesaid aspect is concerned, it is, no doubt, true that the authority has not stated as to on what basis the authority has reached subjective satisfaction that the petitioner will get bail on presenting the application for bail and he will continue the alleged illegal activities again.

8. Considering the aforesaid aspect of the matter, wherein the authority has not properly explained as to on what basis the authority has reached the subjective satisfaction that the petitioner, on presenting the application, will be released on bail, and since the subjective satisfaction for reaching the said conclusion is not reflected on the record, the petition is required to be allowed. The petition, therefore, is required to be allowed on the aforesaid ground.

9. In view of what is stated above, this petition is allowed. The order of detention dated 21.1.2004 is quashed and set aside. The detenu, Ganeshbhai Mathurbhai Chhara (Rathod) is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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